

ASSEMBLY BILL

No. 1067

Introduced by Assembly Member Cook

February 23, 2007

An act to amend Sections 313, 313.1, and 313.4 of the Penal Code, relating to harmful matter.

LEGISLATIVE COUNSEL'S DIGEST

AB 1067, as introduced, Cook. Harmful matter.

Existing law defines harmful matter and provides that any person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly sells, rents, distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, any harmful matter to a minor or who knowingly displays, sells, or offers to sell in any coin-operated vending machine that is not supervised by an adult and that is located in a public place, other than a public place from which minors are excluded, any harmful matter is punishable by a fine of not more than \$2,000, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

This bill would provide that any person who owns, operates, or maintains a newsrack in any public place or private business establishment, other than a place from which minors are excluded, displaying harmful matter who does not employ blinder racks, as specified, shall be punished by a fine not exceeding \$100 for a first offense, a fine not exceeding \$200 for a 2nd offense, or for a 3rd or subsequent violation, a fine not exceeding \$1,000 or imprisonment in a county jail not to exceed 6 months, or by both that fine and imprisonment. This bill would make other conforming changes. Because

this bill would create a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 313 of the Penal Code is amended to
2 read:

3 313. As used in this chapter:

4 (a) “Blinder racks” means any opaque item or device that rests
5 on or in front of harmful matter so that the lower two-thirds of the
6 matter is not exposed to view.

7 (b) “Business establishment” means any commercial enterprise
8 that distributes or exhibits harmful matter where it can be viewed
9 by members of the general public.

10 (c) “Distribute” means to transfer possession of, whether with
11 or without consideration.

12 (d) “Exhibit” means to show.

13 ~~(a)~~

14 (e) “Harmful matter” means matter, taken as a whole, which to
15 the average person, applying contemporary statewide standards,
16 appeals to the prurient interest, and is matter which, taken as a
17 whole, depicts or describes in a patently offensive way sexual
18 conduct and which, taken as a whole, lacks serious literary, artistic,
19 political, or scientific value for minors.

20 (1) When it appears from the nature of the matter or the
21 circumstances of its dissemination, distribution or exhibition that
22 it is designed for clearly defined deviant sexual groups, the appeal
23 of the matter shall be judged with reference to its intended recipient
24 group.

25 (2) In prosecutions under this chapter, where circumstances of
26 production, presentation, sale, dissemination, distribution, or
27 publicity indicate that matter is being commercially exploited by
28 the defendant for the sake of its prurient appeal, that evidence is

1 probative with respect to the nature of the matter and can justify
2 the conclusion that the matter lacks serious literary, artistic,
3 political, or scientific value for minors.

4 ~~(b)~~

5 (f) “Matter” means any book, magazine, newspaper, video
6 recording, or other printed or written material or any picture,
7 drawing, photograph, motion picture, or other pictorial
8 representation or any statue or other figure, or any recording,
9 transcription, or mechanical, chemical, or electrical reproduction
10 or any other articles, equipment, machines, or materials. “Matter”
11 also includes live or recorded telephone messages when
12 transmitted, disseminated, or distributed as part of a commercial
13 transaction.

14 ~~(e)~~

15 (g) “Person” means any individual, partnership, firm,
16 association, corporation, limited liability company, or other legal
17 entity.

18 ~~(d) “Distribute” means to transfer possession of, whether with~~
19 ~~or without consideration.~~

20 ~~(e)~~

21 (h) “Knowingly” means being aware of the character of the
22 matter.

23 ~~(f) “Exhibit” means to show.~~

24 ~~(g)~~

25 (i) “Minor” means any natural person under 18 years of age.

26 (j) “Newsrack” means any display that is located on public
27 property or in a private business establishment where the contents
28 can be viewed by members of the general public that contains
29 harmful matter for the purpose of distributing or exhibiting it.

30 SEC. 2. Section 313.1 of the Penal Code is amended to read:

31 313.1. (a) Every person who, with knowledge that a person is
32 a minor, or who fails to exercise reasonable care in ascertaining
33 the true age of a minor, knowingly sells, rents, distributes, sends,
34 causes to be sent, exhibits, or offers to distribute or exhibit by any
35 means, including, but not limited to, live or recorded telephone
36 messages, any harmful matter to the minor shall be punished as
37 specified in Section 313.4.

38 It does not constitute a violation of this section for a telephone
39 corporation, as defined by Section 234 of the Public Utilities Code,

1 to carry or transmit messages described in this chapter or to
2 perform related activities in providing telephone services.

3 (b) Every person who misrepresents himself or herself to be the
4 parent or guardian of a minor and thereby causes the minor to be
5 admitted to an exhibition of any harmful matter shall be punished
6 as specified in Section 313.4.

7 (c) (1) Any person who knowingly displays, sells, or offers to
8 sell in any coin-operated or slug-operated vending machine or
9 mechanically or electronically controlled vending machine that is
10 located in a public place, other than a public place from which
11 minors are excluded, any harmful matter displaying to the public
12 view photographs or pictorial representations of the commission
13 of any of the following acts shall be punished as specified in
14 Section 313.4: sodomy, oral copulation, sexual intercourse,
15 masturbation, bestiality, or a photograph of an exposed penis in
16 an erect and turgid state.

17 (2) Any person who knowingly displays, sells, or offers to sell
18 in any coin-operated vending machine that is not supervised by
19 an adult and that is located in a public place, other than a public
20 place from which minors are excluded, any harmful matter, as
21 defined in subdivision (a) of Section 313, shall be punished as
22 specified in Section 313.4.

23 ~~(d) (1) Nothing in this section invalidates or prohibits the~~
24 ~~adoption of an ordinance by a city, county, or city and county that~~
25 ~~restricts the display of material that is harmful to minors, as defined~~
26 ~~in this chapter, in a public place, other than a public place from~~
27 ~~which minors are excluded, by requiring the placement of devices~~
28 ~~commonly known as blinder racks in front of the material, so that~~
29 ~~the lower two-thirds of the material is not exposed to view. Any~~
30 ~~person who owns, operates, or maintains a newsrack in any public~~
31 ~~place or private business establishment, other than a place from~~
32 ~~which minors are excluded, displaying harmful matter who does~~
33 ~~not employ blinder racks shall be punished by a fine not exceeding~~
34 ~~one hundred dollars (\$100) for a first offense, a fine not exceeding~~
35 ~~two hundred dollars (\$200) for a second offense, or for a third or~~
36 ~~subsequent violation, a fine not exceeding one thousand dollars~~
37 ~~(\$1,000), imprisonment in a county jail not to exceed six months,~~
38 ~~or by both that fine and imprisonment.~~

39 (2) *This subdivision shall not apply to the display of materials*
40 *that do not contain harmful matter on the front cover.*

1 (e) Any person who sells or rents video recordings of harmful
2 matter shall create an area within his or her business establishment
3 for the placement of video recordings of harmful matter and for
4 any material that advertises the sale or rental of these video
5 recordings. This area shall be labeled “adults only.” The failure to
6 create and label the area is an infraction, punishable by a fine not
7 to exceed one hundred dollars (\$100). The failure to place a video
8 recording or advertisement, regardless of its content, in this area
9 shall not constitute an infraction. Any person who sells or
10 distributes video recordings of harmful matter to others for resale
11 purposes shall inform the purchaser of the requirements of this
12 section. This subdivision shall not apply to public libraries as
13 defined in Section 18710 of the Education Code.

14 (f) Any person who rents a video recording and alters the video
15 recording by adding harmful material, and who then returns the
16 video recording to a video rental store, shall be guilty of a
17 misdemeanor. It shall be a defense in any prosecution for a
18 violation of this subdivision that the video rental store failed to
19 post a sign, reasonably visible to all customers, delineating the
20 provisions of this subdivision.

21 (g) It shall be a defense in any prosecution for a violation of
22 subdivision (a) by a person who knowingly distributed any harmful
23 matter by the use of telephones or telephone facilities to any person
24 under the age of 18 years that the defendant has taken either of the
25 following measures to restrict access to the harmful matter by
26 persons under 18 years of age:

27 (1) Required the person receiving the harmful matter to use an
28 authorized access or identification code, as provided by the
29 information provider, before transmission of the harmful matter
30 begins, where the defendant previously has issued the code by
31 mailing it to the applicant after taking reasonable measures to
32 ascertain that the applicant was 18 years of age or older and has
33 established a procedure to immediately cancel the code of any
34 person after receiving notice, in writing or by telephone, that the
35 code has been lost, stolen, or used by persons under the age of 18
36 years or that the code is no longer desired.

37 (2) Required payment by credit card before transmission of the
38 matter.

39 (h) It shall be a defense in any prosecution for a violation of
40 paragraph (2) of subdivision (c) that the defendant has taken either

1 of the following measures to restrict access to the harmful matter
2 by persons under 18 years of age:

3 (1) Required the person receiving the harmful matter to use an
4 authorized access or identification card to the vending machine
5 after taking reasonable measures to ascertain that the applicant
6 was 18 years of age or older and has established a procedure to
7 immediately cancel the card of any person after receiving notice,
8 in writing or by telephone, that the code has been lost, stolen, or
9 used by persons under the age of 18 years or that the card is no
10 longer desired.

11 (2) Required the person receiving the harmful matter to use a
12 token in order to utilize the vending machine after taking
13 reasonable measures to ascertain that the person was 18 years of
14 age or older.

15 (i) Any list of applicants or recipients compiled or maintained
16 by an information-access service provider for purposes of
17 compliance with paragraph (1) of subdivision (g) is confidential
18 and shall not be sold or otherwise disseminated except upon order
19 of the court.

20 SEC. 3. Section 313.4 of the Penal Code is amended to read:

21 313.4. Every person who violates Section 313.1, other than
22 subdivision (d) or (e), is punishable by fine of not more than two
23 thousand dollars (\$2,000), by imprisonment in the county jail for
24 not more than one year, or by both that fine and imprisonment.
25 However, if the person has been previously convicted of a violation
26 of Section 313.1, other than subdivision (e), or of any section of
27 Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1
28 of this code, the person shall be punished by imprisonment in the
29 state prison.

30 SEC. 4. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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